

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3758 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

JASHUBHAI BHAVABHAI VAGHARI

Versus

DISTRICT MAGISTRATE

Appearance:

Mr. N.M. Kapadia for MS DR KACHHAVAH for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 26-4-96 passed by the District Magistrate, Kheda under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 29-4-96 and since then the petitioner is under detention.

2. The present Special Civil Application was filed in this Court on 20-5-96 and on 21-5-96 Rule returnable on 8-7-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 10 criminal cases under the Bombay Prohibition Act were registered against the petitioner at Police Station, Nadiad (Rural). After taking note of the allegations in these criminal cases, the detaining authority has also considered the statements made by 5 witnesses against the petitioner's anti social, criminal and bootlegging activities. It has been mentioned that the petitioner is a head strong person engaged in the bootlegging activities, he has been using weapons, creating an atmosphere of fear and terror and has become a problem to the public order on account of his anti social activities of the sale of country liquor. Accordingly the detention order has been passed.

4. The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has kept his arguments confined to the question that even if the allegations and materials against the petitioner are taken to be correct on its face value, it can not be said that a case of breach of public order is made out. At the most it is a case of breach of law and order.

5. For the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 it is found that the allegations and materials, on the basis of which the detention order has been passed, do not constitute a case of breach of public order and it is at the most a case of breach of law and order. The detention order, therefore, can not be sustained in the eye of law.

6. Accordingly this Special Civil Application is allowed and the impugned detention order dated 26-4-96 passed by the District Magistrate, Kheda is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.